

Introduced by Senator Speier

December 6, 2004

An act to amend Section 2051.5 of, and to add Sections 124.5, 1749.85, and 2059 to, the Insurance Code, relating to homeowners' insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 2, as introduced, Speier. Homeowners' insurance: valuation: continuing education.

Existing law requires an applicant for a fire and casualty broker-agent license to complete courses in a prelicensing curriculum, and to pass an examination. Existing law requires fire and casualty broker-agents to meet specified continuing education requirements.

This bill would require the Department of Insurance to develop a curriculum to instruct fire and casualty broker-agents and applicants for fire and casualty broker-agent licenses in proper methods of estimating the replacement value of structures, and of recommending appropriate levels of coverage under a homeowners' insurance policy. On and after a specified effective date, it would prohibit a fire and casualty broker agent from transacting homeowners' insurance unless he or she has successfully completed this curriculum. The bill would also require applicants for a broker-agent license and individuals who are not broker-agents to have completed and been examined on this curriculum. The bill would require broker-agents and other individuals to complete courses in this curriculum periodically thereafter, as specified.

Existing law provides that, under a specified type of homeowners' insurance policy, when a state of emergency has been declared, no time limit of less than 24 months from the date that the first payment toward the actual cash value is made shall be placed upon an insured

in order to collect the full replacement cost of the loss, subject to the policy limit.

This bill would apply this 24-month minimum period, in addition, to the collection of the full additional living expenses for loss of use. It would also require, if a state of emergency has been declared, and if debris is removed from the covered property by any person or entity at no charge to the insured, or at a rate that is below the fair market rate for the services rendered, that the insurer pay the insured an amount equal to the fair market rate for those services, subject to the policy limit.

Existing law generally regulates the terms of homeowners' insurance policies.

This bill would prohibit a homeowners' insurance policy issued, delivered, or renewed in this state from containing a provision that, in the event of a total loss of the insured structure due to fire, limits payment for the loss of personal property to an amount less than the policy limits for personal property loss. It would prohibit an insurer from requiring the insured to provide an inventory or other accounting of the personal property lost.

Under existing law, the Insurance Commissioner generally regulates the business of insurance.

This bill would prohibit an insurer, or insurance agent or broker, from using any computer software product marketed or intended to be used as an aid in discussions with insureds, or applicants for insurance, regarding the estimated cost of replacing, in whole or in part, a structure under a homeowners' insurance policy, unless the product has been approved for use by the commissioner. It would require the commissioner to adopt regulations establishing criteria for approval of these products.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 124.5 is added to the Insurance Code, to
2 read:

3 124.5. "Homeowners' insurance" means insurance covering
4 the risks described in subdivision (a) of Section 675.

5 SEC. 2. Section 1749.85 is added to the Insurance Code, to
6 read:

1 1749.85. (a) The department shall develop a curriculum to
2 instruct fire and casualty broker-agents and applicants for fire
3 and casualty broker-agent licenses in proper methods of
4 estimating the replacement value of structures, and of
5 recommending appropriate levels of coverage under a
6 homeowners' insurance policy. Each provider of courses based
7 upon this curriculum shall submit its course content to the
8 commissioner for approval.

9 (b)(1) A fire and casualty broker-agent who is licensed on the
10 date that this requirement takes effect shall not transact
11 homeowners' insurance unless he or she has successfully
12 completed the curriculum approved by the commissioner
13 pursuant to subdivision (a). This requirement shall take effect 18
14 months after the date that the department finalizes the
15 curriculum.

16 (2) A fire and casualty broker-agent who is licensed after the
17 date specified in paragraph (1) shall not transact homeowners'
18 insurance unless he or she has met the requirements of that
19 paragraph, or has passed a qualifying examination that includes
20 the material in the curriculum approved pursuant to subdivision
21 (a).

22 (3) A fire and casualty broker-agent shall not transact
23 homeowners' insurance unless he or she successfully completes
24 the curriculum approved pursuant to subdivision (a) at least once
25 every six years following his or her satisfaction of the
26 requirements of paragraph (1) or (2).

27 (4) The commissioner shall suspend the license to transact
28 homeowners' insurance of any fire and casualty broker-agent
29 who does not meet the requirements of this subdivision. The
30 license may be reinstated only upon application to the
31 commissioner and successful completion of an examination
32 based upon the approved curriculum.

33 (c) A person not licensed as a fire and casualty broker-agent
34 shall not estimate the replacement value of a structure, or
35 recommend an appropriate level of coverage under a
36 homeowners' insurance policy, unless he or she has been
37 certified to do so by passing an examination developed by the
38 commissioner on this subject. The commissioner shall require
39 such a person to be recertified periodically in a manner and
40 frequency to be determined by the commissioner.

SEC. 3. Section 2051.5 of the Insurance Code is amended to read:

2051.5. (a) Under an open policy that requires payment of the replacement cost for a loss, the measure of indemnity is the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured, without a deduction for physical depreciation, or the policy limit, whichever is less.

If the policy requires the insured to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value of the damaged property, as defined in Section 2051, until the damaged property is repaired, rebuilt, or replaced. Once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property, up to the limits stated in the policy.

(b)(1) No time limit of less than 12 months from the date that the first payment toward the actual cash value is made shall be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit. Additional extensions of six months shall be provided to policyholders for good cause.

(2) *In the event of a loss relating to a “state of emergency,” as defined in Section 8558 of the Government Code, the following provisions apply:*

(A) *No time limit of less than 24 months from the date that the first payment toward the actual cash value is made shall be placed upon the insured in order to collect the full replacement cost of the loss or the full amount of additional living expenses for loss of use, subject to the policy limit. Nothing in this section shall prohibit the insurer from allowing the insured additional time to collect the full replacement cost or additional living expenses for loss of use.*

(B) *If debris is removed from the covered property by any person or entity at no charge to the insured, or at a rate that is below the fair market rate for the services rendered, the insurer shall pay the insured an amount equal to the fair market rate for those services, subject to the policy limit.*

(c) (1) In the event of a total loss of the insured structure, no policy issued or delivered in this state may contain a provision

1 that limits or denies payment of the replacement cost in the event
2 the insured decides to rebuild or replace the property at a location
3 other than the insured premises. However, the measure of
4 indemnity shall be based upon the replacement cost of the
5 insured property and shall not be based upon the cost to repair,
6 rebuild, or replace at a location other than the insured premises.

7 *(2) No policy issued, delivered, or renewed in this state may*
8 *contain a provision that, in the event of a total loss of the insured*
9 *structure due to fire, limits payment for the loss of personal*
10 *property to an amount less than the policy limits for personal*
11 *property loss. An insurer shall not require the insured to provide*
12 *an inventory or other accounting of the personal property lost.*

13 *(3) For the purposes of paragraphs (1) and (2), an insurer*
14 *shall not consider whether the foundation of the insured structure*
15 *may be used to rebuild the structure when determining if the*
16 *damage constitutes a total loss.*

17 *(4) The commissioner shall adopt regulations defining “total*
18 *loss” for the purposes of this section.*

19 (d) Nothing in this section shall prohibit an insurer from
20 restricting payment in cases of suspected fraud.

21 (e) The changes made to this section by the act that added this
22 subdivision shall be implemented by an insurer on and after the
23 effective date of that act, except that an insurer shall not be
24 required to modify policy forms to be consistent with those
25 changes until July 1, 2005. On and after July 1, 2005, all policy
26 forms used by an insurer shall reflect those changes.

27 (Added by Stats. 2004, Ch. 311, Sec. 1. Effective August 25,
28 2004.)

29 SEC. 4. Section 2059 is added to the Insurance Code, to read:

30 2059. No insurer, or insurance agent or broker, may use any
31 computer software product marketed or intended to be used as an
32 aid in discussions with insureds, or applicants for insurance,
33 regarding the estimated cost of replacing, in whole or in part, a
34 structure under a homeowners’ insurance policy, unless the
35 product has been approved for use by the commissioner. The
36 producer of the software product may apply to the commissioner
37 for approval. The approval or disapproval of the product shall be
38 based upon criteria set forth in regulations adopted by the
39 commissioner.

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